MONTANA LEGISLATIVE HISTORY

Chapter 259 19 91

Bill H 695 S _____ Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 20	✓C	Hearing Date(s)	Mar 13	✓C
	Feb 21	✓C			C
		C			C
		C			C
Date Out	Feb 21	✓C		Mar 13	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 675

INTRODUCED BY SQUIRES, TOOLE, HALLIGAN

IN THE HOUSE

FEBRUARY 7, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 23, 1991	PRINTING REPORT.
FEBRUARY 25, 1991	SECOND READING, DO PASS.
FEBRUARY 26, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 88; NOES, 10.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 13, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 15, 1991	SECOND READING, CONCURRED IN.
MARCH 16, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 18, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 675

INTRODUCED BY [signature]

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TEMPORARY INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; and

(b) requesting relief under Title 27, chapter 19, part

INTRODUCED BILL
HB 675

3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a

showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

-End-

2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	PLACED ON CONSENT CALENDAR		
2/23	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/06	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCUR MOTION FAILED	22	24
3/14	2ND READING INDEFINITELY POSTPONED	28	19

HB 675 INTRODUCED BY SQUIRES, ET AL.

REVISE TEMPORARY INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOW ISSUANCE OF TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY

2/07	INTRODUCED		
2/07	REFERRED TO JUDICIARY		
2/07	FIRST READING		
2/20	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED		
2/25	2ND READING PASSED	86	11
2/26	3RD READING PASSED	88	10
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO JUDICIARY		
3/13	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	48	0
3/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/22	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 259	EFFECTIVE DATE: 10/01/91	

HB 676 INTRODUCED BY FORRESTER, ET AL.

ESTABLISH A PROBLEM AND COMPULSIVE GAMBLING PROGRAM

BY REQUEST OF GAMING ADVISORY COUNCIL

2/07	INTRODUCED
2/07	REFERRED TO JUDICIARY
2/07	FIRST READING
2/07	FISCAL NOTE REQUESTED
2/08	REREFERRED TO HUMAN SERVICES & AGING
2/14	FISCAL NOTE RECEIVED
2/15	FISCAL NOTE PRINTED
3/08	HEARING
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED
3/25	REREFERRED TO APPROPRIATIONS
3/26	HEARING
3/27	TABLED IN COMMITTEE

HB 677 INTRODUCED BY BENEDICT, ET AL.

ALLOW 1 MILL FOR COUNTY LITERACY PROGRAM

2/07	INTRODUCED
2/07	REFERRED TO TAXATION
2/08	FIRST READING
2/20	HEARING
3/19	COMMITTEE REPORT—BILL PASSED AS AMENDED

HEARING ON HB 675
ALLOW TRO TO ISSUE UPON THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY

Presentation and Opening Statement by Sponsor:

REP. SQUIRES, HOUSE DISTRICT 58, stated that the bill deals with issuing temporary restraining orders. She stated that HB 310 also deals with temporary restraining orders, but there was a question about the bill and some of the local Justices asked for more clarification about being able to issue a temporary restraining order in the area of abuse. At that time, the Attorney General indicated that there was no specific indication that this area was covered. She stated that HB 675 covers the area of abuse on page 2, line 21 - 24. Rep. Squires stated that if an individual is in jeopardy and verbally abused, a temporary restraining order can be issued.

Proponents' Testimony:

Pat Bradly, Montana Magistrates Association, gave written testimony in favor of HB 675. EXHIBIT 8

John Ortwein, Montana Catholic Conference, gave written testimony in favor of HB 675. EXHIBIT 9

SEN. HALLIGAN, SENATE DISTRICT 29, stated that judges are having trouble issuing a TRO (temporary restraining order) in situations that do not involve an injury. He felt that wasn't good public policy and the bill deals with those situations that do not involve an injury.

Michael Sherwood, Montana Trial Lawyers Association, stated that his Association supports HB 675.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

REP. SQUIRES encouraged the committee for a do pass recommendation. She felt that the bill was a good bill that protects the citizens of Montana.

HEARING ON HB 773
REVISE INVOL. COMMITMENT STATUTE LAW ENFORCEMENT TO READ RIGHTS

Presentation and Opening Statement by Sponsor:

REP. STICKNEY, HOUSE DISTRICT 26, stated that HB 773 was at the request of mental health personnel. She stated that there have been a lot of legislation during the session dealing with the treatment of mentally ill individuals when they are apprehended

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL "Hearings" DATE 2-20-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #675

DATE 2-14-91 SPONSOR(S) H.D. Squires

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PAT BRADLEY	MT MAG. ASSN	X	
JOHN ORTIGEN	MT CATHOLIC CONFERENCE	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXHIBIT 6
DATE 2-20-91
HB 675

Montana Magistrates Association

February 20, 1991

HB 675, an act revising temporary injunction procedures.

Testimony by Pat Bradley, Lobbyist for MMA before House Judiciary

Mr. Chairman and Committee Members:

The courts of limited jurisdiction are the primary court in Montana for filing petitions for injunctive relief under Sec. 40-4-121.

The MMA supports legislation such as HB 675 that will give clearer intent and guidance from the legislature to adjudicate these vexing cases.

In a Dec. 22, 1989 opinion, the Attorney General concluded that the legislature did not intend to provide injunctive relief under 40-4-121(3) in the absence of physical abuse, harm, or bodily injury. Since that time, the courts have followed this interpretation. I submit a copy of this opinion with my testimony.

Rep. Squires' bill, broadens legislative intent to include the threat of physical abuse, harm or bodily injury. This expanded language will allow greater latitude for a temporary restraining order, but the courts would appreciate a clear statement from the legislature exactly those circumstances where an applicant qualifies for relief.

Judge Michael Morris and Judge David Clark, Justices of the Peace in Missoula, cannot be here today but have sent a written request for clarification of this law. I will attach their letter to this testimony.

They ask, among other things, that you address the problem of a justice court issuing a TRO which may conflict with those of a District court in a pending case. Sec. 40-4-123 states that District and Justice courts have concurrent jurisdiction over TRO's. This conflict could have been remedied under HB 291 which was heard in this committee on Jan 30, and which specified that if a case is filed in District court, an application for a TRO must be filed in that court. This bill was tabled, but your reconsideration of this bill would eliminate this problem.

We ask that you clarify your intent in this statute to supercede the attorney general's opinion, to give a definition of "harm" and advise if physical harm is the only criteria for a TRO.

Thank you.

Pat Bradley

Exhibit # 8
2/20/91 HB 675

December 17, 1990

Senator Mike Halligan
Missoula County Attorneys Office
Missoula, Mt. 59802

Dear Senator,

As we discussed a few days ago, the Courts have experienced various difficulties with the interpretation and application of that statute, 40-4-121 MCA, which authorizes courts of limited jurisdiction to grant Temporary Restraining Orders and Injunctions. Per your request, these have been reduced to writing for your consideration. Since it seems that the best remedy to these issues is legislative, please review these issues again and let us know if we can be of any assistance.

Here then is the first difficulty.

Clause (3) of the above statute provides that, under certain conditions, relief may be sought through a verified petition "alleging physical abuse, harm or bodily injury...". A recent Attorney Generals Opinion contrues this to mean that threats of physical injury, or the (justifiable) apprehension of bodily injury is an insufficient basis upon which to grant the relief requested. This suggests that any notion of "harm", under 45-2-101(25) which does not include that of bodily injury or physical abuse cannot be invoked under clause 3 of 40-4-121 MCA. (See the enclosed AG Opinion, #50, 1989.) Many judges throughout the State now interpret the statute in this way.

An obvious problem with such a reading is that it excludes relief to someone who has e.g., been threatened with a gun, but was not otherwise harmed (or "disadvantaged).

The legislature could clear this up by providing a precise definition of "harm" which lays out exactly those circumstances, <u>if any</u>, where an applicant under this section qualifies for relief but does not allege bodily injury or physical abuse.

Here now is the second problem.

It is clearly the intent of 40-4-121 (4) that <u>a condition</u> of issuing an <u>ex-parte</u> TRO is that the reviewing judge make a factual

finding that a failure to issue the Order will result in immediate and irreparable injury to the petitioner.

However, it is not clear whether the statute countenances that the Court, without making the above finding, but upon the filing of a verified petition alleging physical abuse, harm or injury, can issue a restraining order at a hearing where both parties have the opportunity to be present. If this circumstance is intended, the statute should clarify this explicitly, and clarify also whether such a restraining order is "temporary" ie, also expires in 20 days, or is instead a temporary injunction good for up to one year, which has been issued without any prior hearing.

Thus, one way of framing this issue is that of whether the factual finding regarding immediate and irreparable harm is a pre-requisite of any restraining order under this clause, or whether there are alternatives, these need to be spelled out explicitly.

A third problem arises regarding the status of an Order for relief which has been removed or appealed to the District Court under either 40-4-123 MCA or 40-4-124 MCA. In particular, it is unclear whether an Order given through e.g., the Justice Court, (set for hearing within twenty (20) days, but also, under the statute, set to expire within 20 days) does in fact expire within 20 days if removed to District Court before the hearing, but is not heard by the District Court within that 20 days.

A sensible remedy to this quandry may be to provide that the Justice Court Order, upon removal, remains in effect until reviewed and ruled upon by the District Court, subject to any District Court modification etc.

The fourth problem (which we did not discuss) concerns jurisdiction between limited courts (Justice, City, and Municipal) and the District Courts in cases where the District Court has had parties involved in a dissolutionment or legal separation. Under 40-4-123 MCA the above Courts have concurrent jurisdicition to issue TRO's. Under (2) of 40-4-123 MCA, the limited Courts are to certify pleadings in a requested TRO to the District Court "if an action for declaration of invalidity of marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties." The difficulty arises where the District Court has already granted orders in the above circumstances. Judge Morris, in particular, feels that it is a questionable practice for the Justice Court to grant a TRO in cases where the District Court recently granted a dissolution or determined child custody or visitation.

Often the Justice Court has no information of the specific requirements in the District Court orders concerning custody, visitation etc. Further, the District Court Orders almost always have a "no harassment" provision.

To avoid a limited court issuing orders which conflict with

those of the District Court and which may result in confusion for an officer at the scene who has a District Court Order saying one thing, and a Justice Court Order issued later saying another thing, it may be useful to consider language which directs that if parties have previously appeared in District Court in a marital or custody dispute, then a request for a TRO should be directed to the District Court which had jurisdiction previously, but that if parties have moved and no longer reside within the confines of that District Court, then such application can be made to any court having appropriate authority to issue a TRO.

Thank you for your attention to these problems.

David K. Clark
Justice of the Peace, Dept. #1

Michael D. Morris
Justice of the Peace, Dept.#2

Enc.

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VOLUME NO. 43 OPINION NO. 50

COURTS - Necessary allegations in petition for temporary restraining order under section 40-4-121(3), MCA;
MONTANA CODE ANNOTATED - Sections 27-19-201(5), 40-4-121, 40-4-123, 45-5-206(1)(b);
MONTANA LAWS OF 1985 - Chapters 526, 700.

HELD: A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

December 22, 1989

Keith D. Haker
Custer County Attorney
1010 Main
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Must there be physical abuse committed before a temporary restraining order may be issued by a justice court under section 40-4-121(3), MCA?

In 1985 the Legislature addressed the issue of domestic violence by enacting two separate pieces of legislation. Senate Bill 449 (1985 Mont. Laws, ch. 700) created and defined the criminal offense of domestic abuse, codified at section 45-5-206, MCA, and amended criminal procedure statutes concerning arrest and bail. House Bill 310 (1985 Mont. Laws, ch. 526) amended statutes in Titles 27 and 40 of the Montana Code Annotated so as to permit certain abused family and household members to obtain self-help temporary restraining orders and preliminary injunctions. See §§ 27-19-201, 27-19-315, 27-19-316, 40-4-121, MCA. House Bill 310 also provided for municipal and justice court jurisdiction to hear and issue the protective orders. In 1989 the Legislature extended this civil jurisdiction to city courts. § 40-4-123, MCA.

Exhibit # 8
2/20/91 HB 675

injury. In particular, the judge may order the defendant to avoid all contact with the alleged victim of the crime. § 46-9-501(b)(v), MCA.

THEREFORE, IT IS MY OPINION:

A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

MR/JP/bf

EXHIBIT
DATE 2-20-91
HB 675

Montana Catholic Conference

February 20, 1991

CHAIRMAN STRIZICH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. I serve as the liaison of the two Roman Catholic Bishops of the State of Montana in matters of public policy.

I am here today in support of HB 675.

A study conducted by the United States Catholic Conference entitled: **Violence in the Family; A National Concern/A Church Concern,** stated that one of every two women in the United States will be abused during her lifetime. This translates to an abusive situation occurring every 18 seconds somewhere in the United States. The study also showed that a disproportionately large number of attacks by husbands seem to occur when the wife is pregnant, thus posing a grave threat to the life of the unborn child as well as the woman.

Research by Dr. Lenore Walker indicates a definite cycle composed of three phases in most domestic violence situations. The first one is the tension-building stage; the second is the explosion; and the third is the calm, loving, respite stage.

With the knowledge we have of domestic violence it seems reasonable to us that it should be halted in stage one of its three stage process. A temporary injunction procedure will help alleviate a number of domestic abusive situations.

Please give your "yes" vote to HB 675.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

CARE & SHARE

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BILL STRIZICH**, on February 21, 1991, at 7:15 A.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HB 675

Motion: **REP. BROOKE** moved DO PASS on HB 675.

Discussion:

REP. MEASURE said this Bill discusses excluding an individual from the home for threat of physical abuse or bodily injury. He said he had worked with this quite a bit.

The judges find it practically impossible to figure out if a minor argument could come under this statute. He opposes it.

Vote: Motion carried with **REPS. WHALEN, WYATT, GOULD, CLARK, RUSSELL, RICE, NELSON AND MEASURE** voting no.

EXECUTIVE ACTION ON HB 773

MOTION: REP. STICKNEY moved to adopt the amendments. There is concern about the process of picking up persons as a service to the mental health personnel, they do Mirandize them. The mental health person who answers the call comes and makes a judgement if the person needs hospitalization, or goes through an appearance for determination of where this person will be placed or is judged to be able to be sent home. The concern of the constitutional rights begin with the patient's need to make arrangements for an appearance. At that time it is more appropriate for the county attorney to discuss the constitutional rights that person should expect during the hearing. The amendment she is offering takes care of the problem. Starting at line 12, "the Notice of Rights to Be Given", whenever a person is in involuntary detained pursuant to 53-21...that person shall prior to appearance, be informed of his constitutional rights and his right under this part by the County Attorney. Within three days of such examination or detention, he must be advised of his right to an attorney. She has taken out the examination language because it is at that point that the mental health person is there. It is changed to "prior to the appearance" that he be informed of his constitutional rights.

DISCUSSION:

REP. TOOLE said reading of these rights parallel what is done in the federal system. The federal system is oriented toward making sure the defendant knows his rights before confessing if something could be used against him in trial. That is not nearly as pertinent a consideration in these kinds of cases as it is in the criminal system. He agreed the timing, reading those rights up-front to the person, as the law now requires, and as this bill would continue to require, helped him to support this Bill. Statements made during the course of examination are still going to be available to the person doing the examination to assist that person to determine whether the person is mentally ill and a danger to himself. The concern about Fifth Amendment and privileges is more pertinent to the criminal system than it is to this. He supports the concept subject to peruse.

VOTE: Motion carried unanimously.

MOTION: REP. WYATT moved HB 773 DO PASS AS AMENDED.

HOUSE STANDING COMMITTEE REPORT

February 21, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 675 (first reading copy -- white) do pass .

Signed: _____

Bill Strizich, Chairman

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 13, 1991, at 10:08 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 675

Presentation and Opening Statement by Sponsor:

Representative Carolyn Squires, District 58, said the bill is an act to revise temporary injunction proceedings. She explained that the justice courts in Missoula want clarification on issuing restraining orders when there may be conflict with action in district court. Representative Squires told the Committee that an Attorney General's opinion issued December 22, 1989 under subsection (3) of 40-4-121, MCA, was the cause of this issue. She said 40-4-123, MCA, pertains to jurisdiction over temporary restraining orders, and that HB 291 which dealt with this issue was tabled.

Proponents' Testimony:

Patricia Bradley, Montana Magistrates Association, read from prepared testimony in support of the bill (Exhibit #1), and provided an amendment (Exhibit #2).

John Ortwein, Montana Catholic Conference, provided prepared testimony in support of HB 675 (Exhibit #3).

Opponents' Testimony:

There were no opponents of HB 675.

Questions From Committee Members:

Chairman Pinsoneault commented that this issue has been here before, and said law enforcement's greatest fear is responding to domestic violence situations. He explained that many times they don't know if there is an actual physical threat or if there may be spite on the part of the complaining party. Representative Squires replied she is concerned with physical abuse and the threat of abuse, as a result of the Attorney General's opinion. She said Justices Clark and Morris in Missoula feel this needs to be clarified.

Senator Halligan commented that if he pointed a weapon at his spouse and said he was going to kill her and had that weapon cocked, but fled when he heard sirens, the Attorney General's opinion is that is not enough. He stated that Missoula judges are concerned, and asked for time to look at the Magistrates amendment.

Closing by Sponsor:

Representative Squires thanked the Committee for the hearing and asked that Senator Halligan carry the bill.

HEARING ON HOUSE BILL 286

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, said the third reading copy of HB 286 has a printing problem, and that second reading copies are correct. He explained that the bill was requested by the Montana Juvenile Probation Officers Association, and narrows their authority concerning youths in need of supervision. Representative Strizich stated it goes back to the philosophy of the youths courts, that probation officers act in the role of parents.

Representative Strizich told the Committee that most of the calls he receives for youth in need of supervision are actually concerning youths who disobey their parents, are truant, or are violating curfew. He said this bill puts the responsibility on parents and relieves unnecessary intrusion by juvenile probation officers in family matters. Representative Strizich said he suggests to such parents that they talk to a counselor or a professional clergy person. He stated the role of probation officers is to deal with kids who commit crimes (Exhibit #4 -second reading copy).

EXECUTIVE ACTION ON HOUSE BILL 922

Motion:

Senator Halligan made a motion that HB 922 BE CONCURRED IN.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 286

Motion:

Senator Towe made a motion that HB 286 BE CONCURRED IN.

Discussion:

There was no discussion on the motion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 675

Motion:

Senator Halligan made a motion that HB 675 BE CONCURRED IN.

Discussion:

Senator Halligan stated that the Magistrates wanted to make it clear who has the authority on actions filed in district court. He said the only change in the bill is beyond the scope of the title.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 284

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane asked for guidance from the Committee with regard to amending HB 284. She suggested striking the remainder of line 11 through "provisions" on line 12, on page 3, following "(5)", and inserting "Provisions". She further suggested including language that support decrees can terminate if the child is due to receive monies such as from an inheritance.

Senator Svrcek asked if the Committee isn't trying to ensure that parties to settlements know this is in the law. He commented that language to this effect may need to be inserted in the bill.

Senator Towe said Valencia Lane is right, as a decree says child support shall terminate upon emancipation. He commented that the bill would accomplish nothing to address the problem, and that decrees providing for termination of support upon emancipation also need to include time to graduate from high school unless the parties provide otherwise.

Senator Mazurek stated it should be made incumbent upon the parties to do this, but decrees cannot be changed retroactively.

Senator Towe commented that he believes the bill has serious problems.

Valencia Lane suggested inserting ", unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree", following "BIRTHDAY" on page 3, line 16.

Senator Towe suggested inserting "if the child is enrolled in high school", following 'school" on page 3, line 14, and striking the remainder of line 16 through "PROVIDED." on line 17.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 13 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓	X	
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 675 (third reading copy -- blue), respectfully report that House Bill No. 675 be concurred in.

Signed: Richard Pinsoneault

Richard Pinsoneault, Chairman

3-12-91
Amd. Coord.

SB 3-13 12:50
Sec. of Senate

13 Mar 91
HB 675

Montana Magistrates Association

March 13, 1991

HB 675, an act revising temporary injunction procedures.

Testimony before the Senate Judiciary Committee by Pat Bradley MMA

Mr. Chairman and Committee members:

The courts of limited jurisdiction are the primary court in Montana for filing petitions for injunctive relief under Sec. 40-4-121.

The MMA supports legislation such as HB 675 that will give clearer intent and guidance fromthe legislature to adjudicate these vexing cases.

In a December 22, 1989 opinion, the Attorney General concluded that the legislature did not intend to provide injunctive relief under 40-4-121(3) in the absence of physical abuse, harm or bodily injury. Since that time, the courts have followed this interpretation. I submit a copy of this opinion with my testimony.

Rep. Squires' bill broadens legislative intent to include the threat of physical abuse, harm or bodily injury.

The courts take no position on what this statute should contain. As stated before, these matters are vexing to adjudicate on application. On the one hand, the court must look to the protection of one party, and on the other, the court has the burden of deciding whether to throw a party out of his or her house.

Our request of the legislature is that you give clear intent and definition to this statute regarding injunctive relief, to facilitate the judges' decisions.

A minor problem that occurs infrequently inthe TRO process is one that was addressed in HB 291, sponsored by Rep. Benedict, called for the filing of TRO's in Justice, City or Municipal courts (HB 291 tab unless a case is already filed in District Court. These courts all have concurrent jurisdiction in these matters. It could happen that both courts could be acting on the same matter. This conflict could be addressed by an amendment to the bill, which I have handed out, and states that "In a case that has been filed and is pending in the district court, the application for a temporary restraining order must be made to that court."

We ask your clarification of Sec. 40-4-121 MCA. Thank you.

Exhibit #2
13 Mar 91
HB675

Montana Magistrates Association

Proposed amendment to HB 675, an act revising temporary injunctive relief in domestic cases.

Add: Section (9), page 4, after line 11

(9) In a case that has been filed and is pending in the district court, the application for a temporary restraining order must be made to that court.

Exhibit #3
13 Mar 91
HB 675

Montana Catholic Conference

March 13, 1991

CHAIRMAN PINSONEAULT AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. I serve as the liaison of the two Roman Catholic Bishops of the State of Montana in matters of public policy.

I am here today in support of HB 675.

A study conducted by the United States Catholic Conference entitled: **Violence in the Family; A National Concern/A Church Concern,** stated that one of every two women in the United States will be abused during her lifetime. This translates to an abusive situation occurring every 18 seconds somewhere in the United States. The study also showed that a disproportionately large number of attacks by husbands seem to occur when the wife is pregnant, thus posing a grave threat to the life of the unborn child as well as the woman.

Research by Dr. Lenore Walker indicates a definite cycle composed of three phases in most domestic violence situations. The first one is the tension-building stage; the second is the explosion; and the third is the calm, loving, respite stage.

With the knowledge we have of domestic violence it seems reasonable to us that it should be halted in stage one of its three stage process. A temporary injunction procedure will help alleviate a number of domestic abusive situations.

Please give your "yes" vote to HB 675.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

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3-13-91
HB 675

VOLUME NO. 43 OPINION NO. 50

COURTS - Necessary allegations in petition for temporary restraining order under section 40-4-121(3), MCA;
MONTANA CODE ANNOTATED - Sections 27-19-201(5), 40-4-121, 40-4-123, 45-5-206(1)(b);
MONTANA LAWS OF 1985 - Chapters 526, 700.

HELD: A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

December 22, 1989

Keith D. Haker
Custer County Attorney
1010 Main
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Must there be physical abuse committed before a temporary restraining order may be issued by a justice court under section 40-4-121(3), MCA?

In 1985 the Legislature addressed the issue of domestic violence by enacting two separate pieces of legislation. Senate Bill 449 (1985 Mont. Laws, ch. 700) created and defined the criminal offense of domestic abuse, codified at section 45-5-206, MCA, and amended criminal procedure statutes concerning arrest and bail. House Bill 310 (1985 Mont. Laws, ch. 526) amended statutes in Titles 27 and 40 of the Montana Code Annotated so as to permit certain abused family and household members to obtain self-help temporary restraining orders and preliminary injunctions. See §§ 27-19-201, 27-19-315, 27-19-316, 40-4-121, MCA. House Bill 310 also provided for municipal and justice court jurisdiction to hear and issue the protective orders. In 1989 the Legislature extended this civil jurisdiction to city courts. § 40-4-123, MCA.

Your inquiry arises in part from an apparent ambiguity created by sections 27-19-201(5) and 40-4-121(3), MCA. Section 27-19-201(5), MCA, provides that an injunction order may be granted "when it appears the applicant has suffered or may suffer physical abuse under the provisions of [section] 40-4-121." However, section 40-4-121, MCA, provides in subsection (3)(a) that a person may seek injunctive relief by filing a verified petition "alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member." While the former statute appears to allow injunctive relief for potential victims of physical abuse which may occur in the future, the latter statute requires a petition for such relief to allege the prior occurrence of physical abuse, harm, or bodily injury.

In addition, your letter notes that a person may be convicted of the criminal offense of domestic abuse, as specified in section 45-5-206(1)(b), MCA, if he "purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member." Under this provision, actual physical abuse or bodily injury is not required to sustain a charge of domestic abuse. If the victim of such criminal domestic abuse is unable to allege actual physical abuse, harm, or bodily injury and is thereby precluded from obtaining a civil temporary restraining order to prevent further abuse, the statutes create an anomaly which arguably serves to frustrate the prophylactic purpose of the 1985 legislation.

Prior to 1981 a district court could enjoin a party in a marriage dissolution or legal separation proceeding from molesting or disturbing the peace of the other party. § 40-4-106, MCA (recodified in 1985 as § 40-4-121, MCA). Recognizing that state laws were not providing adequate protection to some spouse abuse victims, the 1981 Legislature extended the availability of district court injunctive relief to spouse abuse victims who had not filed a petition for dissolution of marriage or legal separation. 1981 Mont. Laws, ch. 180. This legislation added subsection (3) to former section 40-4-106, MCA, which is now section 40-4-121, MCA, and added subsection (5) to section 27-19-201, MCA. As discussed above, the 1985 Legislature enacted further changes in these laws to increase the availability and effectiveness of the protective orders. See "Montana's New Domestic Abuse Statutes: A New Response To An Old Problem," Women's Law Caucus, 47 Mont. L. Rev. 403, 414-16 (1986). Former spouses and cohabitants, as well as current spouses, may now obtain protective orders, which are enforceable by criminal misdemeanor sanctions. §§ 40-4-121(3)(b), 45-5-626, MCA. Municipal, justice, and city courts have concurrent jurisdiction with district courts to issue protective orders under section 40-4-123, MCA.

Ex. 3a
3-13-91
HB 675

Initially, it is necessary to distinguish between injunctive relief available to parties in a district court proceeding for dissolution of marriage or legal separation under subsection (2) of section 40-4-121, MCA, and injunctive relief available under subsection (3) of section 40-4-121, MCA, where a petition for dissolution or separation has not been filed. In the former instance, a motion brought by a spouse under subsection (2) does not have to allege physical abuse in order for the district court to issue a temporary injunction against the other spouse. In the latter instance, subsection (3) requires an allegation of physical abuse, harm, or bodily injury against the petitioner. Since section 27-19-201(5), MCA, authorizes injunctive relief in both instances, its language ("has suffered or may suffer physical abuse") is not inconsistent with the different requirements of subsections (2) and (3) of section 40-4-121, MCA.

The fundamental rule of statutory construction is that the intention of the Legislature controls. § 1-2-102, MCA. See Missoula County v. American Asphalt, 216 Mont. 423, 701 P.2d 990 (1985). The intention of the Legislature is first determined, if possible, from the plain meaning of the words used. Haker v. Southwestern Railway Co., 178 Mont. 364, 578 P.2d 724 (1978). If legislative intent cannot be so determined, other rules of statutory construction, including consideration of the statute's legislative history, may be applied to ascertain the intent. State ex rel. Normile v. Cooney, 100 Mont. 391, 47 P.2d 637 (1935); Thiel v. Taurus Drilling Ltd. 1980 II, 218 Mont. 201, 710 P.2d 33 (1985).

Subsection (3) of section 40-4-121, MCA, provides in relevant part:

> A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:
>
> (a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member; and
>
> (b) requesting relief under Title 27, chapter 19, part 3.

The question is whether the Legislature intended to authorize a justice court to issue a temporary restraining order under this subsection where the person requesting relief has been threatened with physical abuse or has a reasonable apprehension of bodily injury but has not been physically abused, harmed, or injured.

The plain meaning of the words "alleging physical abuse, harm, or bodily injury" supports the view that threats or apprehension would not be a sufficient basis for a petition requesting injunctive relief under section 40-4-121(3), MCA. This view is further supported by the legislative history of House Bill 310, and I must conclude that the Legislature did not intend to provide for injunctive relief under this statute in the absence of physical abuse, harm, or bodily injury.

As introduced, House Bill 310 required the subsection (3) petition to allege "physical abuse against the petitioner, including attempting to cause or causing bodily injury or causing the petitioner to engage in involuntary sexual relations by threat or force." At the hearing before the House Judiciary Committee on February 5, 1985, Representative Krueger noted that courts may be reluctant to issue temporary restraining orders in response to threats alone. Committee minutes, House Judiciary Committee, February 5, 1985. House Bill 310 was thereafter amended so that a subsection (3) petition could allege "physical abuse, harm, or bodily injury or the threat of physical abuse, harm, or bodily injury." However, the Senate Judiciary Committee voted to strike the amendment's reference to "threat of physical abuse, harm, or bodily injury," and the Senate passed the bill with the reference deleted. The House of Representatives subsequently concurred in the Senate version of House Bill 310, resulting in the present language in section 40-4-121(3)(a), MCA.

Generally, the rejection of an amendment indicates that the Legislature did not intend the bill to include the provisions embodied in the rejected amendment. 2A Sutherland Statutory Construction § 48.18 (4th ed. 1964). Cf. Matter of W.J.H., 226 Mont. 479, 736 P.2d 484 (1987). I am persuaded that the Legislature's rejection of the specific provision concerning threats of physical abuse, harm, or bodily injury indicates its intention that injunctive relief under section 40-4-121(3), MCA, should not be granted solely upon an allegation of such threats.

The Legislature did not choose to define the terms "physical abuse," "harm," and "bodily injury" for purposes of section 40-4-121(3), MCA. However, the definitions of "harm" and "bodily injury" found in section 45-2-101, MCA, appear to be applicable to the terms as they are used in Title 40. See § 1-2-107, MCA. The 1985 Legislature added the two latter terms to accompany the term "physical abuse," indicating an intention to expand the range of abusive conduct to which injunctive relief under section 40-4-121(3), MCA, would be an appropriate judicial response. Finally, I note that in admitting a defendant to bail in a criminal domestic abuse proceeding, the judge may prescribe reasonable conditions in order to protect any person from bodily injury. In particular, the judge may order the defendant to avoid all contact with the alleged victim of the crime. § 46-9-501(b)(v), MCA.

THEREFORE, IT IS MY OPINION:

A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

Sincerely,

Marc Racicot

MARC RACICOT

DATE 13 March 21

COMMITTEE ON Senate Judiciary Committee

284 920 581

VISITORS' REGISTER H.B. 675 922 286

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
John McRae	DEPT of SRS /CSED	920 922	✓	
L. Amy Pfeifer	Dept. of SRS/CSED	920 922	✓	
Pat Bradley	Mt Magistrate Assoc.	675	X	
Lydia L. Ortiz	MT Catholic Conference	675	X	
Judy Crist	Juvenile Prob.	286	X	
Michael F. Coffey	Juvenile Prob	286	X	
Lisa Garland	Juv. Prob.	286	X	
Dick Martin	Juv. Prob. Officer	286	X	
Bruce Johnson	Juv Prob Officer	286	X	
ESTHER HAHN	MONTANA'S CHILDREN	284	X	
Mona Jamison	Mt. Juv. Prob. Officers	286	X	